IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 10-20224

JOHN AYANBADEJO; FELICIA AYANBADEJO,

Plaintiffs – Appellants

v.

JANET NAPOLITANO, SECRETARY, DEPARTMENT OF HOMELAND SECURITY; EVELYN M. UPCHURCH, Director Texas Service Center; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; SHARON A. HUDSON, United States Citizenship and Immigration Services District Director,

Defendants – Appellees

Appeals from the United States District Court for the
Southern District of Texas
USDC Mo. 4:06-CV-1177

Before HIGGINBOTHAM, DAVIS, and BENAVIDES, Circuit Judges. PER CURIAM:

Rule 4 (a) (1) (B) of the Federal Rules of Appellate Procedure and 28 C.S.C. 2107(b) requires that the notice of appeal by the defendant in n civil case in which the United States is a party be filed within sixty days of entry of the judgment or order from which appeal is taken. In this action for declaratory relief, the district court granted the defendants' motion fm summary judgment and entered final judgment on September 15, 2009 On March 31, 2010, the plaintiffs filed a motion to extend or reopen the time to

file a notice of appeal. The district court noted that it could not extend the time for filing the notice of appeal because the motion was filed more than thirty days after entry of judgment. See FED, R. APP. P. 4(a)(5). It also found that it could not reopen the time to file the notice because the motion was filed more than 180 days alter entry of judgment. See FED. R. APP. P. 4(a)(6). Accordingly, it denied the motion on April 6, 2010.

The district court's ability to extend the time to file a notice of appeal is limited by the provisions of Federal Rule of Appellate Procedure 4. See FED. R. APP. P. 26(b)(1). Because the plaintiffs here did not meet the requirements of Rule 4, the district court acted correctly in denying the motion to extend or reopen the time for filing a notice of appeal. As a result, the notice of appeal was untimely. The time limitation for filing a notice of appeal in a civil case is jurisdiction. *Bowles o. Russell,* 551 U.S. 205, 212-13 (2007). The lack of a timely notice mandates dismissal of the appeal. *Robbins v. Margin,* 750 F.2d 405, 408 (5th Cir. 1985).[1]

IT IS SO ORDERED.

---

[1] The plaintiffs filed an amended notice of appeal on April 6, 2010. which was even more out of time than the one filed on April 2, and that appeal must also be dismissed The a notice of appeal from the district court's denial of their motion to extend or reopen the time to file the notice Because the district court had authority to grant the motion any argument that it abused its discretion in denying it is frivolous. Accordingly, that appeal also dismissed.